IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WP(C).No. 12766 of 2004(T)

PETITIONER:

DR.GEETHA RAJEEV, GREESHMAM,
HOSPITAL JUNCTION, PARASSALA.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE SECRETARY(TAXES) TO GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE TAHSILDAR, NEYYATTINKARA.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.4.1.2002 ISSUED BY R2.

P2: TRUE COPY OF ORDER DT.7.3.2003 PASSED BY THE APPELLATE AUTHORITY ON THE APPEAL FILED BY THE PETITIONER.

P3: TRUE COPY OF ORDER DT.28.2.2004 PASSED BY THE DISTRICT COLLECTOR, TRIVANDRUM.

P4: TRUE COPY OF NOTICE DT.29.7.2004 ISSUED BY THE VILLAGE OFFICER, PARASSALA.

P5: TRUE COPY OF EXTRACT OF THE ASSESSMENT REGISTER OF THE BUILDING.

P6: TRUE COPY OF TAX RECEIPT.

P7: TRUE COPY OF TAX RECEIPT.

P8: TRUE COPY OF REGISTRATION CERTIFICATE.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.12766 of 2004

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Dated this the 12th day of December, 2007.

JUDGMENT

The petitioner, a Dental Doctor, is challenging demand of luxury tax for her residential building. The petitioner has produced records from the Panchayat to show that the building was constructed in 1998 and she was remitting tax separately for the two portions of the building with separate numbers. Government Pleader on the other hand contended that petitioner furnished no objection certificate from the Panchayat for construction of the building on 20.1.2001. However, in the return filed by the petitioner under the Building Tax Act, she has declared date of completion of construction as 12.1.2000. Ext.P5 is the extract of property tax assessment register of Parassala Panchayat showing property tax for the two portions of the petitioner's building, one numbered as 1081 and another as 1131 in Ward No.V. It is seen from the said record that one portion is treated as Dental Hospital by the Panchayat and the other portion as residence. The liability for luxury tax under Section 5A arises only if the construction of building is completed on or after 1.4.1999. If the Panchayat records on tax payment is true, then building was completed and was being used by the

petitioner from 1998 onwards. If this is correct, petitioner cannot be fastened with liability for luxury tax. However, since the Panchayat records are conflicting with petitioner's own statement in the returns filed, I feel an enquiry is called for with reference to other records like date of giving electricity connection to the new building of the petitioner for regular use and initial electricity bills paid by the petitioner. The W.P. is accordingly disposed of directing the second respondent to reconsider the matter and decide the date of completion of construction after giving an opportunity to the petitioner to produce electricity bills for the first few months for the buildings along with Panchayat records. It will be open to second respondent to call for any more particulars or conduct enquiry of his own and decide on the date of completion of construction of the building by the petitioner. The second respondent is directed to take a decision within two months from now. The conditional stay granted by this court will continue for three months and thereafter recovery will be based on fresh orders to be issued by the Tahsildar. The petitioner will produce copy of this judgment and records relied on by her for compliance by the Tahsildar.

C.N.RAMACHANDRAN NAIR
Judge

pms